

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**KENNETH HUTCHINGS, JR.,**

**Defendant.**

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**No. 4:15 CR-393 HEA (NAB)**

**GOVERNMENT'S FIRST MOTION TO CONTINUE SENTENCING**

Comes now, the United States of America, by and through Colleen Lang, Assistant United States Attorney for said district, and hereby moves this Court to continue the sentencing presently scheduled for April 13, 2016, for a period of thirty (30) days. In support of this motion, the Government states the following:

1. The Defendant is charged with two counts of Possession of Child Pornography in violation of 18 U.S.C. Section 22552(a)(5)(B). The Defendant pled guilty to these charges on January 14, 2016. A plea agreement signed by both parties was filed that day. The Defendant is currently in the custody of the United States Marshal Service.
2. Included in that plea agreement, beginning on page 10 and carrying into page 11, are the statutory penalties for the crime of Possession of Child Pornography. The plea agreement states that the crime carries a mandatory minimum sentence of ten years in the Bureau of Prisons if the offender has a prior conviction. Pursuant to *United States vs. Woodard*, 694 F.3d 950 (2012), a juvenile adjudication for a sexual offense is considered a prior conviction under Title 18 U.S.C. Section 2252(b). The sole basis

for the enhanced range of punishment in the Defendant's case is his juvenile adjudication for sexual abuse.

3. The Government has recently been informed that there are two pending challenges to the *Woodard* case. Both of these cases involve a child pornography offense and a defendant with a juvenile adjudication for a sex crime. The results of these two cases could affect the use of juvenile adjudications as prior convictions in child pornography crimes. The first case is *United States vs. William Gauld*, case number 15-1690, and it is currently pending before the Eighth Circuit Court of Appeals. In that case, originating from the Western District of Arkansas (4:14-CR-015), the defendant is challenging the district court's application of the enhanced range of punishment based on a juvenile adjudication. Briefs were submitted to the Eighth Circuit Court of Appeals and a decision is expected any day.
4. The second case currently dealing with this issue is *United States vs. David Edward Jakel*, Eighth Circuit case number 16-1618. In this case, from the district of Minnesota, the district court held that the defendant's juvenile adjudication for a sex crime was not a prior conviction and therefore did not trigger the mandatory minimum. The district court did not follow the precedent in *Woodard* and reasoned that *Woodard* only addressed the constitutional, not the statutory, question. That judgment was entered on February 16, 2016, and the Government filed a protective notice of appeal on March 9, 2016. The defendant then filed a notice of cross-appeal. The government's brief is due on April 26, 2016.
5. The case at hand is very similar to these two pending appeals cases. The Government

- relied on the *Woodard* decision when applying the ten year mandatory minimum to range of punishment in the plea agreement. The outcome of the above cases could change the range the punishment in this case.
6. Thus, since the Defendant has not yet been sentenced, the Government is asking for a continuance of the sentencing to determine the appropriate range of punishment. The Government has concerns about the outcome of this issue, and in effort to avoid litigating the matter later, would request a thirty (30) day continuance to research the matter, discuss with the defense counsel, and decide how to proceed.
  7. The Government has contacted the Defendant's attorney and they do not object to a continuance.

Respectfully submitted:

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I hereby certify that on April 4, 2016, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Brocca Morrison  
Attorney for the Defendant

/s/ Colleen C. Lang  
Colleen C. Lang, #56872MO  
Assistant United States Attorney